

Message Text

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ACTION IO-14

INFO OCT-01 CIAE-00 CU-04 INR-07 NSAE-00 AID-05 USIA-06
AF-10 ARA-10 EA-07 EUR-12 NEA-10 ISO-00 IOE-00
OIC-02 DHA-02 L-03 SS-15 SP-02 TRSE-00 NSC-05
/115 W

-----054075 161648Z /50

P R 161549Z AUG 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC PRIORITY 7145
INFO USMISSION GENEVA
USMISSION USUN

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NESCO

E.O. 11652: N/A
TAGS: AORG, OCON, SHUM, UNESCO
SUBJECT: UNESCO: EXECUTIVE BOARD WORKING GROUP TO
STRENGTHEN UNESCO'S HUMAN RIGHTS PROCEDURES,
PARIS AUGUST 1-5, 1977

REF: PARIS 22757

SUMMARY: FOLLOWING IS A WRAP-UP REPORT ON SUBJECT
WORKING GROUP MEETING SUBMITTED JOINTLY BY PROF.
BUERGENTHAL AND ACTING PERMREP WARVARIV WHO REPRESENTED
US AT THE MEETING. THE REPORT ADOPTED BY THE WORKING
GROUP MEETS THE OVERALL GOALS OF US. HOWEVER, THE
GROUP DID NOT HAVE TIME TO WORK OUT AGREED SET OF PRO-
CEDURES FOR DEALING WITH HUMAN RIGHTS COMPLAINTS WHICH
IS REGRETTABLE. END OF SUMMARY.

1. THE WORKING GROUP (WG) OF EXECUTIVE BOARD SET UP IN
PURSUANCE OF 102 EX/DECISIONS 5.6.2 (7) ADJOURNED ON
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FRIDAY, AUGUST 5, 1977, FOLLOWING THE ADOPTION OF ITS
REPORT. THE REPORT WAS ADOPTED, ARTICLE BY ARTICLE,
IN THE COURSE OF ALL-DAY SESSION THAT ENDED AT 8:00 P.M.

2. IN THE OPINION OF THE US DELEGATION BOTH THE SUB-
STANTIVE CONTENTS AND TONE OF THE REPORT ADVANCE THE
OVERALL GOALS OF THE US AS SET OUT IN POSITION PAPER.

MOREOVER, NOTHING IN THE REPORT APPEARS TO PRESENT ANY SIGNIFICANT LEGAL OR POLITICAL PROBLEM FOR THE US.

3. THE OUTCOME OF THE WG'S DELIBERATIONS WERE NOT TOTALLY SATISFACTORY, HOWEVER, BECAUSE ITS REPORT DOES NOT INCLUDE AN AGREED UPON SET OF PROCEDURES FOR DEALING WITH UNESCO HUMAN RIGHTS COMPLAINTS AND BECAUSE IT DOES NOT EVEN CONTAIN A STATEMENT - CALLED FOR IN THE WG'S TERMS OF REFERENCE - ENUMERATING THOSE RULES IT COULD AGREE UPON AND THOSE IT COULD NOT AGREE UPON. THE FAILURE OF THE WG TO REACH AGREEMENT ON THIS LATTER STATEMENT RESULTED IN A DECLARATION BY CHAIRMAN OF THE WG, WHICH HE MADE WHEN ADJOURNING THE MEETING, THAT THE WG HAD NOT COMPLETED ITS TASK AND THAT IT WOULD THEREFORE BE RECONVENED PRIOR TO THE 103RD EXBD SESSION.

4. ON THE LAST DAY OF THE MEETING, THE WG HAD BEFORE IT DRAFT REPORT PREPARED BY SECRETARIAT, CONSISTING OF TWO PARTS. PART I SUMMARIZED THE DELIBERATIONS AND PART II, ENTITLED "POINTS OF AGREEMENT AND DIVERGENCE" ENUMERATED VARIOUS PROCEDURES FOR DEALING WITH HUMAN RIGHTS COMMUNICATIONS INDICATING, WHEREVER NECESSARY, WHETHER OR NOT THEY COMMANDED THE SUPPORT OF THE WG AS A WHOLE. ONLY PART I WAS ADOPTED. THE WG ADJOURNED WITHOUT HAVING HAD TIME TO CONSIDER SUBSTANCE OF PART II. CONSEQUENTLY, UNLESS THE WG IS RECONVENED LIMITED OFFICIAL USE

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PRIOR TO EXBD MEETING, THE BOARD WILL HAVE BEFORE IT ONLY PART I, THAT IS, THE SUMMARY OF THE WG'S DELIBERATIONS.

5. IN US DEL'S VIEW, THE BLAME FOR THIS OUTCOME RESTS SQUARELY WITH THE CHAIRMAN OF THE EXBD WHO CHAIRED THE WG MEETING. A SERIES OF REMARKS BY THE CHAIRMAN OVER AND OVER AGAIN SEEMED TO BE CLEARLY CALCULATED TO ENCOURAGE THE WORKING GROUP NOT TO COMPLETE ITS WORK. THIS ATTITUDE WAS NOT LOST ON SOVIET DELEGATION WHICH USED EVERY OPPORTUNITY THEREAFTER TO SLOW DOWN THE DELIBERATIONS. PRIVATE AND STRONG PUBLIC INTERVENTION BY US AND SOME OTHER DELEGATIONS FAILED TO GET THE CHAIRMAN TO EXERCISE HIS FULL AUTHORITY TO TAKE NECESSARY STEPS TO PUT AN END TO THESE TACTICS.

6. TURNING TO IMPORTANT SUBSTANTIVE ISSUES, A MAJORITY OF THE WG SUPPORTED US POSITION THAT UNESCO HAD LEGAL COMPETENCE TO DEAL WITH COMPLAINTS FROM INDIVIDUALS CHARGING VIOLATIONS OF HUMAN RIGHTS RELATING TO EDUCATION, SCIENCE, CULTURE AND COMMUNICATION. EFFORTS BY

THE SOVIETS AND POLES TO DELETE THE "COMMUNICATION"

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INFO OCT-01 AF-10 ARA-10 EA-07 EUR-12 NEA-10 ISO-00
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OIC-02 DHA-02 L-03 SS-15 SP-02 TRSE-00 NSC-05
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CATEGORY FROM THIS LISTING OF RIGHTS FAILED. IT SHOULD BE NOTED THAT THEY SOUGHT TO DISGUISE THEIR AIM BY NEVER REFERRING TO "COMMUNICATION" WHEN SPEAKING OF THE RIGHTS FALLING WITHIN UNESCO'S SPHERE OF COMPETENCE. MOREOVER, DURING THE REVIEW OF WG REPORT, THEY AGAIN ATTEMPTED TO OBTAIN DELETION OF THIS RIGHT BY A DRAFTING GIMMICK. WHEN US DEL. CALLED THE WG'S ATTENTION TO CONSEQUENCES OF SOVIET "PROPOSAL," THEY WITHDREW IT. WE BELIEVE THAT THIS STRATEGY SHOULD BE WATCHED AT SUBSEQUENT UNESCO HUMAN RIGHTS MEETINGS ON THIS SUBJECT.

7. ALTHOUGH DOCUMENT 102 EX/19 DISTINGUISHES ONLY BETWEEN "CASES" AND "QUESTIONS", VARIOUS WG MEMBERS FELT THAT AN ADDITIONAL CATEGORY - "SITUATIONS" - SHOULD BE INTRODUCED. THEY DEFINED A "SITUATION" AS A SERIES OF INDIVIDUAL CASES REVEALING SYSTEMATIC VIOLATIONS OF HUMAN RIGHTS. US DEL DID NOT OPPOSE THIS CONCEPT BECAUSE OF STRONG SUPPORT FOR IT AND THE ABSENCE OF ANY EFFORT BY THOSE PROMOTING IT TO LIMIT INDIVIDUAL
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COMMUNICATIONS ONLY TO "SITUATIONS." THE SOVIETS STRONGLY OPPOSED THE CONCEPT OF "SITUATIONS," BUT GAVE NO REASONS FOR THEIR POSITION. US DEL FEELS THAT AT SUBSEQUENT MEETINGS ON THIS SUBJECT THERE IS A RISK THAT SOME DELEGATIONS WILL SEEK TO EXPLOIT THIS CONCEPT IN ORDER TO LIMIT THE RIGHT OF INDIVIDUAL COMMUNICATION TO "SITUATIONS."

8. THERE WERE ONLY TWO IMPORTANT ISSUES ON WHICH US POSITION CLEARLY REPRESENTED THE MINORITY VIEW. THE FIRST HAD TO DO WITH SO-CALLED "SOURCES OF COMMUNICATIONS," THAT IS, WHO CAN FILE A COMPLAINT; THE SECOND RELATED TO THE PUBLICITY TO BE GIVEN TO THE PROCEEDINGS AND REPORTS RELATING TO HUMAN RIGHTS VIOLATIONS. ALTHOUGH US DEL WAS ABLE TO REDRAFT THE WG'S REPORT TO DISGUISE, AT LEAST IN PART, OUR ISOLATED POSITION ON THESE AND A FEW LESSER ISSUES, THE FACT REMAINS THAT WE WERE QUITE ISOLATED ON THESE ISSUES. AS FAR AS THE FIRST ISSUE IS CONCERNED, THE PRINCIPAL PROBLEM CONCERNS RIGHT OF THE NGO'S TO FILE COMPLAINTS WHERE THEY ARE NOT THEMSELVES VICTIMS OF THE VIOLATION. THERE WAS NO SUPPORT IN WG FOR THE VIEW, ADVANCED BY US, THAT IN UNESCO CONTEXT AN NGO SHOULD NOT HAVE TO SHOW ANY SPECIAL INTEREST TO FILE A COMPLAINT, PROVIDED THE COMPLAINT APPEARED TO BE WELL FOUNDED. ON THE OTHER HAND, US DEL FEELS THAT ONLY A MINORITY OF DELEGATES WANTED TO EXCLUDE NGO'S ALTOGETHER. AN ACCEPTABLE FORMULA, BASED ON COMPARABLE UN LANGUAGE OR ONE TIED TO ALL THREE CATEGORIES OF UNESCO CONSULTATIVE AND "MUTUAL INFORMATION" STATUS NGO'S, PROBABLY CAN BE WORKED OUT. WITH REGARD TO THE SECOND ISSUE, THE PUBLICITY TO BE GIVEN TO PROCEEDINGS INVOLVING INDIVIDUAL COMPLAINTS, US DEL BELIEVES THIS IS AND WILL RE-

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MAIN THE TOUGHEST PROBLEM. ONLY VERY FEW DELEGATIONS FAVORED ANY SORT OF PUBLICITY AND A MAJORITY WANT TO PRESERVE CONFIDENTIALITY, EVEN AT THE FINAL REPORTING STAGE. US POSITION IS FURTHER COMPLICATED BY THE FACT THAT WE DON'T WANT MUCH PUBLICITY WITH REGARD TO "QUESTIONS." ALL THAT PROBABLY CAN BE HOPED FOR WITH REGARD TO INDIVIDUAL COMPLAINTS IS SOME PUBLIC-ATION AT FINAL STAGE OF THE PROCEEDINGS.

9. SOVIET AND POLISH DELEGATIONS WERE UNSUCCESSFUL IN CONVINCING WG THAT UNESCO SHOULD NOT ESTABLISH FORMAL

PROCEDURES FOR HUMAN RIGHTS COMPLAINTS BY INDIVIDUALS AND THAT IT LEAVE THIS FIELD TO UN AND TO PROCEDURES ESTABLISHED BY TREATIES. US DEL BELIEVES THAT THESE ARGUMENTS WILL BE REPEATED AT SUBSEQUENT MEETINGS AND THAT SOVIETS MAY ATTEMPT TO STRENGTHEN THEIR ARGUMENTS BY SEEKING ADOPTION OF UN RESOLUTIONS OSTENSIBLY DESIGNED TO PREVENT "DUPLICATION" OF HUMAN RIGHTS EFFORTS WITHIN THE UN FAMILY AND TO PROMOTE GREATER COORDINATION BETWEEN SPECIALIZED AGENCIES AND THE UN AS WELL AS IN THE APPLICATION OF THE COVENANTS. ALTHOUGH THE NOTION OF COORDINATION IS APPEALING, IT MAY HAVE ABOVE-MENTIONED DETRIMENTAL IMPLICATIONS FOR HUMAN RIGHTS.

10. US DEL BELIEVES THAT IT CONVINCED A NUMBER OF DELEGATIONS OF THE NEED TO ADOPT LESS RESTRICTIVE RULES RELATING TO THE ADMISSIBILITY OF INDIVIDUAL COMPLAINTS. THUS THERE SEEMED TO BE INCREASING SUPPORT

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OIC-02 DHA-02 L-03 SS-15 SP-02 TRSE-00 NSC-05
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P R 161549Z AUG 77
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FOR MORE LIBERAL RULES ON EXHAUSTION OF DOMESTIC REMEDIES AND ON MULTIPLICITY OF COMPLAINTS.

11. US DEL BELIEVES THAT DEPT. SHOULD AS SOON AS POSSIBLE CONSIDER WHETHER IT FAVORS RECONVENING OF WG

PRIOR TO EXBD MEETING IN SEPTEMBER, AS ITS CHAIRMAN APPARENTLY INTENDS TO DO, OR WHETHER IT SHOULD SEEK TO AVOID SUCH A MEETING.

FYI: IT IS PROF. BUERGENTHAL'S VIEW THAT, UNLESS CHAIRMAN OF WG AGREES TO ADHERE MORE RIGOROUSLY TO AND CONDUCT MEETING CONSISTENT WITH THE CONCEPT OF CONSENSUS SET OUT IN WG'S TERMS OF REFERENCE, WHICH HE FAILED TO DO, FEW VERY GOOD RULES WILL COME OUT OF THE WG SINCE OPPOSITION BY SOVIETS TO SPECIFIC RULES WILL RESULT IN THEIR EXCLUSION FROM THE WG TEXT. IT MIGHT THEREFORE BE WISER, HE FEELS, NOT TO RECONVENE THE WG AND TO PREPARE A SET OF RULES FOR SUBMISSION BY SOME OTHER DELEGATIONS AT THE EXBD MEETING ITSELF. WARVARIV LIMITED OFFICIAL USE

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DOES NOT SHARE THIS PESSIMISTIC VIEW. HE FEELS THAT VALUABLE EXPERIENCE, GAINED BY THE WG AS RESULT OF FIVE-DAY MEETING, SHOULD BE UTILIZED TO OUR ADVANTAGE. MOREOVER, HE SEES REAL DANGER IN ALLOWING THE FULL BOARD (45 COUNTRIES) TO DRAFT THE DESIRED PROCEDURE, OR TO REACT TO A SET OF RULES PROPOSED BY AN EXBD MEMBER. WARVARIV FEELS THAT IN ANY SUCH PUBLIC DEBATE ON DELICATE ISSUE OF HUMAN RIGHTS MANY EXBD MEMBERS MIGHT FIND IT MORE DIFFICULT TO OPENLY OPPOSE SOVIET AND EE PRESSURE THAN THEY COULD AFFORD IN A SMALL CLOSED MEETING LIKE THE WG. END FYI.

12. IF THE WORKING GROUP IS RECONVENED, STRONG EFFORT SHOULD AND WILL BE MADE IN ADVANCE TO CLARIFY THE MANNER IN WHICH CHAIRMAN WILL CONDUCT THE MEETING AND HOW HE WILL DETERMINE WHICH COMPLAINT PROCEDURES ENJOY WG'S SUPPORT. IF HE INSISTS ON WORKING BY UNANIMITY, ONE WAY OF HANDLING THIS IS TO INSIST THAT WG ALSO REPORT ON THOSE COMPLAINT PROCEDURES THAT COMMAND A MAJORITY SUPPORT.

13. ACTING PERMREP WOULD LIKE TO TAKE THIS OPPORTUNITY TO EXPRESS SINCERE APPRECIATION FOR PROF. BUERGENTHAL'S INVALUABLE ASSISTANCE, HIS EXPERTISE, HIS SPIRIT OF COOPERATION AND HIS DEDICATION TO THE ASSIGNED TASK.

14. APPROVED WG REPORT WILL BE AIRPOUCHED TO DEPT. AS SOON AS ISSUED (PROBABLY AUGUST 22).
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HUMAN RIGHTS, COMMITTEE MEETINGS, MEETING REPORTS
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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
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Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Previous Classification: LIMITED OFFICIAL USE
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Review Transfer Date:
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SAS ID: 1588692
Secure: OPEN
Status: NATIVE
Subject: UNESCO: EXECUTIVE BOARD WORKING GROUP TO STRENGTHEN UNESCO'S HUMAN RIGHTS PROCEDURES, PARIS AUGUST 1-5, 1977
TAGS: AORG, OCON, SHUM, XX, UNESCO
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/67d4f759-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009